



CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY



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LINDA S. ADAMS
SECRETARY FOR
ENVIRONMENTAL PROTECTION

ARNOLD SCHWARZENEGGER
GOVERNOR

Certified Mail: 7003 1680 0000 6174 9293

December 6, 2007

Mr. Brad Banner
Environmental Health Director
Butte County Environmental Health
202 Mira Loma Drive
Oroville, California 95965

Dear Mr. Banner:

The California Environmental Protection Agency (Cal/EPA), Office of Emergency Services, Office of the State Fire Marshal, Department of Toxic Substances Control, and the State Water Resources Control Board conducted a program evaluation of Butte County Environmental Health Certified Unified Program Agency (CUPA) on November 14 and 15, 2007. The evaluation was comprised of an in-office program review and field oversight inspections. The State evaluators completed a CUPA Evaluation Summary of Findings with your agency's program management staff, which includes identified deficiencies, with preliminary corrective actions and timeframes, program observations and recommendations, and examples of outstanding program implementation.

The enclosed Evaluation Summary of Findings is now considered final and based upon review, I find that Butte County Environmental Health CUPA's program performance is satisfactory with some improvement needed. To complete the evaluation process, please submit Deficiency Progress Reports to Cal/EPA that depict your agency's progress towards correcting the identified deficiencies. Please submit your Deficiency Progress Reports to JoAnn Jaschke every 90 days after the evaluation date. The first deficiency progress report is due on February 13, 2008.

Cal/EPA also noted during this evaluation that Butte County Environmental Health has worked to bring about a number of local program innovations, including: obtaining the staffing resources necessary for implementing the CUPA program and identifying facilities that should be regulated under the CUPA program by almost tripling the number of regulated facilities within one year. We will be sharing these innovations with the larger CUPA community through the Cal/EPA Unified Program web site to help foster a sharing of such ideas statewide.

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Thank you for your continued commitment to the protection of public health and the environment through the implementation of your local Unified Program. If you have any questions or need further assistance, you may contact your evaluation team leader or Jim Bohon, Manager, Cal/EPA Unified Program at (916) 327-5097 or by email at jbohon@calepa.ca.gov.

Sincerely,

[Original signed by Don Johnson]

Don Johnson
Assistant Secretary
California Environmental Protection Agency

Enclosure

cc/Sent via email:

Mr. Vance Severin, Deputy Director
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Mr. Mike Huerta, CUPA Program Manager
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Amended

CERTIFIED UNIFIED PROGRAM AGENCY EVALUATION SUMMARY OF FINDINGS

CUPA: Butte County Environmental Health

Evaluation Date: November 14 and 15, 2007

EVALUATION TEAM

Cal/EPA: JoAnn Jaschke
SWRCB: Marci Christofferson
OES: Jack Harrah
DTSC: Fredrick Thomas
OSFM: Francis Mateo

This Evaluation Summary of Findings includes the deficiencies identified during the evaluation, program observations and recommendations, and examples of outstanding program implementation activities. The evaluation findings are preliminary and subject to change upon review by state agency and CUPA management. Questions or comments can be directed to JoAnn Jaschke at (916) 323-2204.

	<u>Deficiency</u>	<u>Preliminary Corrective Action</u>
1	The CUPA did not complete their FY 05/06 self audit. CCR, Title 27, section 15280 (Cal/EPA)	The CUPA provided their FY 06/07 self audit to the evaluation team; therefore Cal/EPA considers this deficiency corrected.
2	The CUPA is not annually reviewing their Inspection and Enforcement Plan. CCR, Title 27, section 15200(b) (Cal/EPA)	By September 30, 2008, the CUPA shall submit a summary of their review of their Inspection and Enforcement Plan to Cal/EPA.
3	The CUPA is not properly collecting the state surcharges from the regulated facilities. In FY 05/06 and 06/07 the CUPA did not collected the CalARP surcharge. In FY 06/07, the CUPA collected \$1,995 for the UST surcharge. This amount should have been higher since the CUPA has approximately 308 underground storage tanks within their jurisdiction. CCR, Title 27, section 15250 (Cal/EPA)	By the FY 08/09 billing, the CUPA shall properly collect and remit the state surcharge from the regulated facilitates as required under Title 27, section 15250.
4	The CUPA has not established the following administrative procedures: <ul style="list-style-type: none">• Public participation	By November 15, 2008, the CUPA will submit copies of the administrative procedures required under Title 27, section 15180(e) to Cal/EPA.

Certified Unified Program Agency (CUPA)
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	<ul style="list-style-type: none"> Records maintenance procedures Procedures for responding to requests for information from the public, from governmental agencies, or from emergency responders, including methods to prevent the release of confidential and trade secret information. <p>HSC, section 25506(a) (exact location of chemicals) HSC, section 25511 (trade secret) CCR, Title 27, section 15180(e) (Cal/EPA and OES)</p>	
5	<p>The CUPA is not implementing and enforcing the requirements of the business plan program for all handlers subject to the program. Specifically, the CUPA is neither regulating nor properly exempting agricultural handlers subject to the business plan program.</p> <p>HSC, section 25503.5(a) (OES)</p>	By May 15, 2008, the CUPA must submit an action plan, with projected timeline, to either regulate all farms subject to the business plan program or to properly exempt these businesses under HSC 25503.5(c)(2), (3), (4), or (5).
6	<p>The CUPA does not have a CalARP dispute resolution procedure.</p> <p>CCR, Title 19, section 19 2780.1 (OES)</p>	By February 15, 2008, the CUPA must establish a dispute resolution procedure that satisfies all elements of 19 CCR 2780.1.
7	<p>The CUPA has not performed an annual CalARP performance audit.</p> <p>CCR, Title 19, section 2780.5 (OES)</p>	By February 15, 2008, the CUPA must perform an annual CalARP performance audit. At the CUPA's option, this information may subsequently be included with the annual Title 27 self audit.
8	<p>The CUPA has not fully implemented a single, unified Inspection and Enforcement Program and Plan.</p> <p>1) Section 11, E-3 procedures for Re-Inspection, Office Hearing, Notice of Violation, Warning Letters, Corrective Action Plan, and Consultation with District Attorney's Office do not appear to be followed.</p> <p>HSC 25404.2(a)(3) Title 27 CCR, section 15200(a)(f) (DTSC)</p>	<p>The CUPA shall immediately begin fully implement a single, unified Inspection and Enforcement Program and Plan.</p> <p>By November 15, 2008, the CUPA will update their inspection and enforcement guidance document to address this.</p>
9	<p>The CUPA did not conduct a complete inspection on 07/18/07. During the inspection, the following was noted:</p> <ol style="list-style-type: none"> 1) Inspector failed to observe that empty drums lacked start accumulation dates as required by Title 22 section 66261.7. 2) Inspector failed to observe expired fire extinguishers (past annual inspection) as required by Title 22 Section 66265.33. 	<p>The DTSC staff conducting the oversight inspection explained these violations to the CUPA inspector, and the CUPA corrected this on site.</p> <p>See corrective action for deficiency 10 that requires CUPA to receive training on classifying violations.</p>

Certified Unified Program Agency (CUPA)
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	<p>Title 22 CCR, section 66261.7 Title 22 CCR, section 66265.33 (DTSC)</p>	
10	<p>The CUPA is not citing violations in a manner consistent with the definitions of minor, Class II or Class I as provided in law and regulation. During the CUPA evaluation, DTSC found:</p> <ol style="list-style-type: none"> 1) Quintero Tires located at 3150 Hwy 32, Chico, CA 95926 1/25/07 inspection indicated the facility had used oil on site that had never been disposed of in 6 years. This violation should have been cited as a Class II violation. The inspection report for the re-inspection on 8/28/07 indicated that there was no label on the used oil filter container which was previously cited during the 1/25/07 inspection. The recalcitrant minor violation should have been elevated to a Class II violation. 2) Danielsen Company, Inc's (located at 435 Southgate Court, Chico, CA 95928) 2001, 2004, and 2006 inspection reports indicated a recurring problem with labeling and accumulation dates. These recalcitrant minor violations should have been elevated to Class II violations. <p>Title 27, CCR, section 15200(f)(2)(C) HSC, sections 25110.8.5 and 25117.6 Title 22, CCR, section 66260.10 (DTSC)</p>	<p>By March 1, 2008, the CUPA shall ensure that staff is trained and familiar with the statutory and regulatory definitions for the different hazardous waste violation classifications.</p> <p>Hazardous waste identification and classification training is available at the 10th Annual California Unified Program Conference on February 4-7, 2008.</p>
11	<p>The CUPA is unable to document that all facilities that have received a notice to comply citing violations have returned to compliance within 30 days of notification. During the file review, it was observed that most violations did not have a record of return to compliance. The business shall either submit a Return to Compliance Certification in order to document its compliance or in the absence of certification the CUPA shall re-inspect the business and document confirmation that compliance has been achieved.</p> <p>Additionally, the follow up is inconsistent and does not have a procedure for tracking violations, or return-to compliance.</p> <p>HSC, section 25187.8(g)(1) (DTSC) CCR, Title 23, section 2712 (e) (SWRCB)</p>	<p>To address this, the CUPA added a column within their database for tracking violations.</p> <p>By December 15, 2007, the CUPA shall ensure that facilities who are cited for violations during hazardous waste inspections have either submitted a Return to Compliance Certification or the CUPA has documented re-inspection of the facility within the required corrective action date.</p> <p>By May 15, 2008, the CUPA will develop a procedure for tracking violations, and return-to-compliance.</p>

Certified Unified Program Agency (CUPA)
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12	<p>The CUPA is inspecting for universal waste when conducting other regulatory activities. The CUPA is required to formally document how it expends 5% of its hazardous waste resources to the oversight of Universal Waste handlers and silver-only generators.</p> <p>HSC, section 25201.4(c) and CUPA forum board position (DTSC)</p>	By May 15, 2008 the CUPA will document how it expends at least 5% of its hazardous waste related resources to the oversight of Universal Waste handlers.
13	<p>Although the CUPA transfers the permit via a fee schedule, the CUPA does not have a detailed transfer permit form that provides a mechanism for the new owner to accept the responsibility of the current permit.</p> <p>HSC, section 25284(b) (SWRCB)</p>	By February 15, 2008 the CUPA will develop a transfer permit form by which the new owner accepts the responsibility of the current operating permit.
14	<p>CUPA does not have a process for approving monitoring, response and plot plans and ensuring that all of the required elements are addressed.</p> <p>CCR, Title 23, section 2641(g) / 2632(d)(1),(2) (SWRCB)</p>	By February 15, 2008 the CUPA will develop a review checklist/policy procedure to ensure that the monitoring, response, and plot plans are reviewed for required elements, applicability to the system, prior to issuing a Permit to Operate.
15	<p>The statement on the CUPA's Permit to Operate referring to Title 23, section 2712(h) does not include Chapter 6.75. It only references Chapter 6.7.</p> <p>CCR. Title 23, section 2712(h), (SWRCB)</p>	By November 15, 2008, the CUPA will revise the statement on the Permit to Operate to include the reference to Chapter 6.75.

CUPA Representative

Mike Huerta
(Print Name)

Originally Signed
(Signature)

Evaluation Team Leader

JoAnn Jaschke
(Print Name)

Originally Signed
(Signature)

Certified Unified Program Agency (CUPA)
Evaluation Summary of Findings

PROGRAM OBSERVATIONS AND RECOMMENDATIONS

The observations and recommendations provided in this section address activities the CUPA are implementing and/or may include areas for continuous improvement not specifically required of the CUPA by regulation or statute.

1. **Observation:** The CUPA took formal enforcement against Network Texaco that had the following significant violations: operating without a valid UST permit, incorrect placement of leak sensors, and for not conducting secondary containment testing. The County DA reached final settlement in this case for \$10,000. The CUPA also participated in a multi-media enforcement case involving an illegal burn of hazardous materials. The CUPA's portion of the final settlement was \$12, 000. In addition, the CUPA referred two cases to the District Attorney for failure for the regulated facilities to comply with HSC, Chapter 6.95.

Recommendation: Continue taking formal enforcement against regulated facilities with non-minor violations when necessary and reporting this on the Annual Enforcement Summary Report (Report 4) submitted to Cal/EPA.

2. **Observation:** The CUPA's files are well organized, complete, and divided into various sections and subsections, making it easy to obtain information about a facility. However, in several of the files, the site maps had not been moved to the "Confidential" folder in the back of the file.

Recommendation: Continue maintaining organized files. OES recommends that the policy for public inspection of records should ensure that the CUPA staff check to make sure that items specified in HSC, sections 25506(a) and 25511 are withheld from public inspection.

3. **Observation:** The business plan policies binder ("HMRRP Program and Policies") includes many obsolete forms, and is in need of an overall updating.

Recommendation: As time allows, update this binder.

4. **Observation:** While the CalARP Program is not fully being implemented at this time, the CUPA has identified its stationary sources and has been working with the operators of each stationary source with respect to submission of a risk management plan.

Recommendation: This is excellent progress since the last evaluation. Keep up the good work.

5. **Observation:** If the CUPA's draft area plan is not finalized by the time the SB391 (pesticide drift) regulations in Title 19 take effect, the area plan will have to comply with the new regulations. Otherwise, the CUPA will have three years to comply with SB391.

Recommendation: None offered.

6. **Observation:** The CUPA ensures that all information from businesses are complete including collection of Fire Code Hazard Class from inventory statements. Additionally, The CUPA works closely with Fire Departments and response agencies during emergency responses and incidents to provide assistance, and share their expertise.

Recommendation: Continue to improve coordination with these agencies by conducting periodic countywide exercises or joint inspections to maintain compliance from the regulated businesses.

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- 7. Observation:** The CUPA did not document in its oversight inspection report or on other hazardous waste inspection reports that consent had been granted by the owner/operator to enter his place of business to conduct a hazardous waste generator inspection.

Recommendation: Remember to document that consent has been granted by the owner/operator in the inspector's report. Documenting consent only serves to strengthen any potential enforcement case by defeating any potential challenge that the 4th amendment may have been abridged.

- 8. Observation:** The CUPA is not using a separate, specific tiered permitting checklist during inspections at tiered permitting facilities.

Recommendation: Develop or adopt a checklist or "cheat sheet" for inspectors to use during inspections of tiered permitting facilities due to the number and types of requirements that are unique to these facilities.

- 9. Observation:** The CUPA's inspection report does not have space to record the classification of a violation, nor is this indicated by the inspector anywhere in the report.

Recommendation: The CUPA may want to have inspectors note the classification of each violation, or at least the minor violations on all inspection reports to clarify which violations are not subject to formal enforcement if complied within the prescribed timeframes.

- 10. Observation:** The CUPA combines hazardous waste complaints with their environmental health complaints.

Recommendation: The CUPA should have a separate tracking system for hazardous waste complaints to ensure that the complaints are documented, investigated and resolved.

- 11. Observation:** The CUPA utilizes the current state forms, however, some of the forms are not properly filled out or signed. Some information is contradictory of the tank system or component at the site. (Example: one form reviewed showed both suction and pressurized system marked, and both double-walled and single-walled piping for a single tank.)

Recommendation: During the permit issuance process, ensure that all required forms are submitted and reviewed for completeness, appropriateness to the tank system, signatures, etc. before approving and issuing the Permit to Operate.

- 12. Observation:** The CUPA Program Application and UST ordinance are contradictory regarding permit transfers.

Recommendation: Revise the CUPA Program application to be consistent with the UST ordinance regarding permit transfers.

- 13. Observation:** The CUPA does not have a database for tracking UST information, inspections, return to compliance, Significant Operational Compliance (SOC), etc.

Recommendation: Develop a database, or other mechanism for tracking the UST information. (A database is the best option, as it can generate report for tracking, etc.)

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14. Observation: The statement on the Permit to Operate referring to T23, Section 2712(h) does not include Chapter 6.75.

Recommendation: Revise the statement to include reference to Chapter 6.75 in addition to Chapter 6.7.

15. Observation: The CUPA is reviewing and approving construction/installation plans, but is not using a checklist to insure that all required elements are included in the review.

Recommendation: Develop a construction/installation checklist to ensure that all required elements are included and meet the requirement.

16. Observation: The CUPA's local UST ordinance is not up-to-date with current State standards. Example: the UST inspection frequency is every three years.

Recommendation: Amend the ordinance to meet current state requirements. Consider generic language for adopting the State standards, so any changes do not affect the ordinance, except in areas where the CUPA wishes to be more restrictive.

17. Observation: The CUPA is conducting comprehensive UST inspections and provides a summary of violations/Notice of Violation as part of the inspection report. In addition, the CUPA provides an excellent, very detailed letter that follows up the inspection. The letter clarifies the violation and what is needed to correct the violation.

Recommendation: This seems to add additional work. CUPA may want to consider using one or the other, instead of both or provide the summary of violations, and then follow-up with the letter as the Notice of Violation.

Certified Unified Program Agency (CUPA)
Evaluation Summary of Findings

EXAMPLES OF OUTSTANDING PROGRAM IMPLEMENTATION

1. The CUPA has done an excellent job in obtaining the staffing resources necessary for implementing the CUPA program. In 2004, the CUPA conducted a fee study to ensure their fees covered the CUPA's expenses. Additionally, the CUPA developed a hazardous material specialist classification. These actions enabled the CUPA to hire two additional field staff; bringing the total field staff to four CUPA staff in the FY 05/06 as well as the CUPA program manager, executive staff, and administrative staff.
2. The CUPA has done an excellent job in going door to door to identify facilities that should be regulated under the CUPA program. The CUPA has made identifying businesses and educating them on the requirements a priority. The total number of regulated facilities almost tripled within one year. In the FY 05/06 the CUPA's total number of regulated facilities was 479. In the FY 06/07 the CUPA's total number of regulated facilities was 1,300.
3. The CUPA's draft area plan is thorough and complete, with respect to Title 19 requirements.
4. The CUPA makes information on their regulated facilities available to the fire agencies by providing the fire agency dispatcher with a docking station and access to the CUPA's database. Additionally, the CUPA continues to explore ways to improve this exchange of information.
5. The CUPA's inspection reports are showing continuing and marked improvement over the past three years.
6. The CUPA program staff and management are active in statewide issues. The CUPA hosts the CUPA Forum Northern Region meetings and the Northern California UST TAG. Staff also regularly attend and participate in these meetings. The Division Deputy Director is also a member of the CUPA Forum Board.